

**Caribe Cleaning Services, Inc., Concorde Maintenance de Puerto Rico, Inc. and Eastern Cleaning Services, Inc. and Congreso de Uniones Industriales de Puerto Rico.** Cases 24-CA-6027, 24-CA-6086, and 24-CA-6246

August 27, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

Upon a charge filed by the Union in Case 24-CA-6027 on October 4, 1989, and amended on November 28, 1989, and on February 2, 1990, the General Counsel of the National Labor Relations Board issued a complaint on January 31, 1990, against Caribe Cleaning Services, Inc. (Caribe) and Concorde Maintenance de Puerto Rico, Inc. (Concorde), the Respondents, alleging that the Respondents are a single employer and have violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. On a charge filed in Case 24-CA-6086 by the Union on February 7, 1990, and amended on March 29, 1990, the General Counsel issued a consolidated amended complaint against the Respondents on March 30, 1990, which added further allegations that the Respondents have violated Section 8(a)(1) and (5) of the Act. On a charge filed in Case 24-CA-6246 by the Union on October 15, 1990, the General Counsel issued a second consolidated amended complaint on November 30, 1990, which added Eastern Cleaning Services, Inc. (Eastern), as a Respondent, alleged that it and the other Respondents constituted a single employer, and added further allegations that the Respondents have violated Section 8(a)(1) and (5) of the Act.

Respondents Caribe and Concorde timely filed an answer denying the substantive allegations of the original complaint on March 5, 1990, and an additional answer denying the substantive allegations of the consolidated amended complaint on April 11, 1990. No answer was filed to the second consolidated amended complaint.

On May 7, 1991, the General Counsel filed a Motion for Summary Judgment. On May 13, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In the Motion for Summary Judgment, the General Counsel contends that the Respondents have failed to file an answer to the second consolidated amended

complaint and that, under Section 102.20 of the Board's Rules and Regulations, the Board should find the allegations of that complaint to be true and issue an order based on those findings. Alternatively, the General Counsel contends that the Board should enter a partial summary judgment against Respondent Eastern and deem admitted all of the substantive allegations added in the second consolidated amended complaint.<sup>1</sup>

We find summary judgment is not proper under the circumstances of this case. Most of the allegations contained in the second consolidated amended complaint previously were alleged in the consolidated amended complaint, and previously were denied in the answer to the consolidated amended complaint filed by Respondents Caribe and Concorde. The Board will not grant a motion for summary judgment based on a respondent's failure to answer an amended complaint's allegations that are substantively unchanged from allegations contained in a prior version of the complaint to which the respondent filed a proper denial.<sup>2</sup>

All the allegations of violations contained in the second consolidated amended complaint that were not alleged in either of the two prior complaints are allegations that various actions of the Respondents violated Section 8(a)(5) and (1) of the Act. These new allegations, however, are dependent on the allegation, repeated from the prior complaints, that the Union is the exclusive representative of an appropriate unit of the Respondents' employees. That allegation was denied in the Respondents' answers to the prior complaints. Consequently, as the critical allegation of the Union's representative status is denied, summary judgment on the new 8(a)(5) allegations may not be granted. Accord-

<sup>1</sup> The General Counsel states in his motion that the attorney who had filed answers to the original complaint and the consolidated amended complaint on behalf of Respondents Caribe and Concorde notified the Regional Director by letters of November 16, 1990, and December 21, 1990, that his law firm no longer represented the Respondents. The General Counsel further states that, by letter dated October 26, 1990, an attorney representing Respondent Eastern informed the Regional Director that the Respondents had ceased doing business in Puerto Rico, were insolvent, and were unlikely to appear in the Board proceedings. In a letter dated November 28, 1990, Respondent Eastern's attorney stated that all three Respondents were defunct and, therefore, the Board proceedings were "academic." The General Counsel further states that Respondent Eastern's attorney did not respond to a January 2, 1991 letter from the Region inquiring whether he was withdrawing the answers to the complaint and amended complaint and whether he was going to file an answer to the second consolidated amended complaint. The General Counsel further recites that on January 24, 1991, the Regional Attorney wrote a letter informing Respondent Eastern's attorney that if no answer to the second consolidated amended complaint was received by February 8, 1991, the General Counsel was going to request summary judgment. Respondent Eastern's attorney did not respond to that letter.

<sup>2</sup> See *James Michael Shull*, 291 NLRB 342 (1988); *Auburn Die Co.*, 282 NLRB 1044 (1987); *Bristol Clothing Mfg. Co.*, 276 NLRB 1060 (1985); *Marko Contractors*, 269 NLRB 990 (1984). We overrule *Gannon's Restaurant*, 288 NLRB 812 (1988), to the extent that it indicates that summary judgment will be granted with respect to allegations in an amended complaint that a respondent fails to answer which in substance are the same as allegations in a prior complaint that the respondent answered and denied.

ingly, we deny the General Counsel's Motion for Summary Judgment.<sup>3</sup>

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<sup>3</sup>Because the alleged violations of Respondent Eastern are derivative and stem from its alleged status as a single employer with Respondents Caribe and Concorde, the answers filed by the latter two suffice to preclude entry of summary judgment against Respondent Eastern. Cf. *Denart Coal Co.*, 301 NLRB 391, 392 (1991).

#### ORDER

It is ordered that the General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that these proceedings are remanded to the Regional Director for Region 24 for further appropriate action.